

EXECUTIVE SECRETARIAT
Routing Slip

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1	DCI				
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20	<i>NO ACTION</i>		✓		
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Remarks:

3437 (10-81)

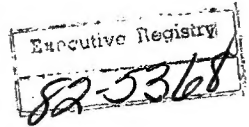
Executive Secretary
6/23/82
Date

25X1

THE WHITE HOUSE
WASHINGTON

CONFIDENTIAL
ATTACHMENTS

CABINET AFFAIRS STAFFING MEMORANDUM



DATE: 6-22-82 NUMBER: 077331 CA DUE BY: -----

SUBJECT: Cabinet Council on Economic Affairs - June 24, 1982

8:45 a.m. - Roosevelt Room

	ACTION	FYI		ACTION	FYI
ALL CABINET MEMBERS	<input type="checkbox"/>	<input type="checkbox"/>	Baker	<input type="checkbox"/>	<input type="checkbox"/>
Vice President	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Deaver	<input type="checkbox"/>	<input type="checkbox"/>
State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clark	<input type="checkbox"/>	<input type="checkbox"/>
Treasury	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Darman (For WH Staffing)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Defense	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Harper	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Attorney General	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Jenkins	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Interior	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Gray	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Agriculture	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Commerce	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
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HHS	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HUD	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
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OMB	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
CIA	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
UN	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
USTR	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
CEA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CCCT/Gunn	<input type="checkbox"/>	<input type="checkbox"/>
CEQ	<input type="checkbox"/>	<input type="checkbox"/>	CCEA/Porter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
OSTP	<input type="checkbox"/>	<input type="checkbox"/>	CCFA/Boggs	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	CCHR/Carleson	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	CCLP/Uhlmann	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	CCNRE/Boggs	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: Attached is the agenda for the CCEA meeting Thursday. There are two papers attached providing background.

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ATTACHMENTS

RETURN TO:

☐ Craig L. Fuller
Assistant to the President
for Cabinet Affairs
456-2823

☒ Becky Norton Dunlop
Director, Office of
Cabinet Affairs
456-2800

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THE WHITE HOUSE

WASHINGTON

June 22, 1982

MEMORANDUM FOR THE CABINET COUNCIL ON ECONOMIC AFFAIRS

FROM: ROGER B. PORTER *RBP*
SUBJECT: Agenda and Papers for the June 24 Meeting

The agenda and papers for the Thursday, June 24 meeting of the Cabinet Council on Economic Affairs are attached. The meeting is scheduled for 8:45 a.m. in the Roosevelt Room.

The first agenda item is a report from the Pension Policy Working Group on public employee pension legislation. In recent weeks administration officials and members of the Pension Policy Working Group have met with congressional proponents of this legislation and with a wide variety of interested parties. A paper from William A. Niskanen, chairman of the Working Group, describing the proposed legislation and outlining a series of options for the Council's consideration is attached.

The second agenda item is a review of global negotiations and North-South economic relations as they emerged from the Versailles Summit. A paper from William Clark, Assistant to the President for National Security Affairs, on this issue is attached.

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WASHINGTON

CABINET COUNCIL ON ECONOMIC AFFAIRS

June 24, 1982

8:45 a.m.

Roosevelt Room

AGENDA

1. Report of the Pension Policy Working Group (CM#112)
2. Global Negotiations (CM#266)

WASHINGTON, D C 20500

MURRAY L. WEIDENBAUM, CHAIRMAN
JERRY L. JORDAN
WILLIAM A. NISKANEN

June 22, 1982

MEMORANDUM FOR THE CABINET COUNCIL ON ECONOMIC AFFAIRS

FROM: WILLIAM A. NISKANEN *WAN*
SUBJECT: Report of the Pension Policy Working Group:
Public Employee Pension Legislation

The Pension Policy Working Group has reviewed the issue of public employee pension legislation and has prepared the attached paper on this issue for the Cabinet Council's consideration.

Attachment

Public Employee Pension LegislationBackground

Congressman John Erlenborn, the ranking minority member of the House Labor Committee, has asked the Administration to support H.R. 4928 and H.R. 4929, the Public Employee Pension Plan Reporting and Accountability Act of 1982 (PEPPRA). This legislation would establish Federal reporting, disclosure, and fiduciary standards for the pension plans of state and local governments. H.R. 4928 would also extend to lump-sum distributions from public pension plans the favorable tax treatment enjoyed by distributions from qualified private plans.

Erlenborn strongly supports these measures on their own merits. He has also emphasized on several occasions that two other pension measures endorsed by the Administration will not emerge from committee unless they are attached to the legislation he wants. The two other measures are 1) a change to prevent private firms from dumping their underfunded pension plans on the PBGC, and 2) an increase in the premiums charged by the Pension Benefit Guarantee Corporation (PBGC), an insurance company owned by the Federal Government.

Without active Administration opposition, PEPPRA would undoubtedly be included in a package with these two measures. Passage of any pension package during this session of Congress, with or without PEPPRA, is uncertain.

In addition to Erlenborn, Senator Chafee and Congressman Burton also supports PEPPRA. The American Federation of State, County, and Municipal Employees also supports the bills. PEPPRA's opponents include the National Governors Association, the National Association of Counties, the U.S. Conference of Mayors and other organizations representing State and local governments.

State and Local Pension Plans

There are about 6,600 State and local pension plans, with over \$150 billion in assets. They cover 11 million current employees and pay benefits to 2.3 million beneficiaries. Most participants belong to very large plans, but most plans have few participants.

Two recent studies found that most large public pension plans are adequately funded and provide information on investments, benefits, and actuarial assumptions to anyone interested. However, a significant number of plans, especially small ones, are underfunded and some of these plans could face financial problems if they do not increase the rate of funding or reduce future benefits. In addition, a large minority of public plans did not provide adequate information on pension benefits to their employees. A smaller percentage had no available actuarial report.

PEPPRA's Provisions

PEPPRA would require the pension plans of State and local governments to submit annual reports to the Department of Labor, to have annual audits, to invest plan assets solely for

the benefit of participants, and to refrain from investing assets in certain projects that involve plan officers. These requirements are similar to Federal reporting, disclosure, and fiduciary standards for private pension plans. (The constitutionality of these requirements is discussed in an Appendix, written by the Justice Department.)

All the reporting requirements would be waived for plans in states with similar reporting laws of their own. However, Federal fiduciary standards would preempt State standards that allow "social investing" or that limit plans to very conservative, low interest investments.

PEPPRA's supporters claim that stricter reporting and disclosure requirements would provide voters and public employees with information needed to evaluate the likely costs of future benefits. Without public knowledge of this information, state and local officials might be tempted to hide the eventual cost of generous pensions.

Possible Compromises

In previous discussions with Erlenborn, Administration officials have raised objections to PEPPRA. Erlenborn has said that he would be willing to drop all Federal enforcement provisions from PEPPRA in exchange for Administration neutrality. The bills currently give the Department of Labor the power to bring civil and criminal actions against managers of public plans for failing to meet the reporting, disclosure, and fiduciary requirements. State attorneys general, plan

participants, and taxpayers would still have the right to sue pension plans in Federal courts, as in the present bill.

Although he has not said so, Erlenborn would probably also agree to eliminating H.R. 4928's tax provisions.

Other Pension Legislation

Passage of two other pieces of legislation sought by the Administration may depend on supporting PEPPRA. The first would prevent ongoing firms from dumping their unfunded pension liabilities on the PBGC. Fully owned by the Federal Government, the PBGC insures benefits from private pension plans. Current law allows firms to terminate pension plans at any time, and turn the plan's assets and liabilities over to the PBGC. If liabilities exceed assets, PBGC can only claim 30 percent of the firm's net worth. By spinning off underfunded subsidiaries, healthy firms can use this provision to unload their pension debt on the PBGC. Although only a few firms have used this technique so far, PBGC fears that it will become increasingly attractive and will soon create a serious drain on PBGC's resources unless current law is changed.

The second desirable pension piece of legislation is a premium increase for the PBGC. The Administration has requested an increase in PBGC's annual premium from \$2.60 to \$6 per plan participant. Without the premium increase, the PBGC will not run out of cash in the near future. However, the

additional money is needed to keep the PBGC actuarially sound. The new premium assumes that the law is changed to prevent the dumping of pension debt on the PBGC.

Policy Options

The Cabinet Council can decide to support PEPPRA, support a weakened version with no Federal enforcement or tax provisions, take no position, or oppose PEPPRA in any form.

Option 1: Support PEPPRA

Advantages

- o Reporting and disclosure for state and local plans would give voters and public employees more information on the eventual costs and benefits of their pension plans. Without such requirements, state and local officials may be tempted to hide the future costs of current pension promises.
- o Requiring State and local plans to invest solely for the benefit of plan participants would discourage social investing. Social investing, for instance in mortgages with below market interest rates, reduces plan income and transfers resources from plan participants to people receiving the mortgage subsidies.
- o Ensuring that public plans are financially sound may reduce the pressure for Federal bailouts in the future.

- o Exempting public plans in states with adequate reporting and disclosure requirements of their own would minimize Federal interference.
- o Supporting PEPPRA will increase the likelihood of obtaining passage of PBGC's premium increase and the tightening of the pension insurance program.

Disadvantages

- o Regulating State and local pension plans, in any form, violates the principle of federalism. Expanding the role of the Federal Government runs counter to the basic tenet of the Reagan Administration.
- o Placing Federal requirements on State and local pension plans would encourage, not discourage, looking to the Federal Government for bailouts. Federal regulation would imply to many a Federal obligation to help State and local plans that get themselves in trouble. The next likely step after PEPPRA would be to extend minimum funding and vesting requirements and pension benefit insurance to public plans.
- o Increased Federal regulation means an increase in the paperwork burden on State and local pension plans and an increase in the Federal bureaucracy.
- o Lump sum distributions from public pension plans now receive favorable tax treatment under temporary IRS guidelines. These guidelines are under study and should not be enacted into law until the Treasury study is complete.

- o There is no guarantee that support for PEPPRA would ensure passage of other desirable pension legislation. Making a deal to support bad legislation in exchange for good legislation would only lead to greater pressures to compromise in other areas.

Option 2: Support a compromise bill with no Federal enforcement and no tax provisions.

Advantages

- o A carefully designed law could encourage the states to enforce their own reporting and fiduciary regulations with minimal Federal interference.
- o A law with no teeth is a small price to pay for two necessary pieces of legislation.

Disadvantages

- o Any increase in Federal regulation, especially of state and local governments, violates Administration principles.
- o Other enforcement mechanisms, such as the right of private parties to sue public pension plans in Federal courts, would be little better than direct Federal involvement.
- o Once a modified PEPPRA was passed, it would be easier to amend it to introduce Federal enforcement, minimum funding standards, and pension benefit insurance for state and local plans.

Option 3: Agree to remain neutral towards a modified version of PEPPRA

Advantages

- o A neutral position towards a weakened version of PEPPRA would not contradict Administration statements on federalism and deregulation.
- o Such a compromise would improve the chances of obtaining the PBGC premium increase and the tightening of the pension insurance program.

Disadvantages

- o The Administration should actively oppose legislation that violates the fundamental principles of federalism and deregulation. For instance, Federal law should not prohibit States from making social investments or from limiting pension plans to very conservative investments.
- o Agreeing not to oppose PEPPRA may give misleading signals about the Administration's willingness to acquiesce on other legislation it dislikes.

Option 4: Oppose PEPPRA in any form

Advantages

- o Even stripped of its Federal enforcement and tax provisions, PEPPRA would impose additional Federal regulations on State and local pension plans.

- o Opposing PEPPRA may have only a small effect on the likelihood of obtaining the other two pieces of pension legislation this session.

Disadvantages

- o A modified version of PEPPRA could improve the operation of State and local pension plans without imposing detailed Federal regulation and enforcement.
- o Opposing PEPPRA would reduce the likelihood of passage of the other two pieces of pension legislation.

Recommendation

The Working Group unanimously recommends that the CCEA support Option 4, opposing PEPPRA in any form. The PBGC premium increase and the tightening of the pension insurance program are not sufficiently urgent to justify Administration acquiescence to PEPPRA.



Office of the
Assistant Attorney General

Washington, D.C. 20530

22 JUN 1982

MEMORANDUM

TO: William A. Niskanen
Council of Economic Advisors

FROM: Theodore B. Olson
Assistant Attorney General
Office of Legal Counsel

RE: Constitutionality of H.R. 4928 and H.R. 4929 under the
National League of Cities case.

These bills are clearly within Congress' power to regulate interstate commerce, see, e.g., Heart of Atlanta Motel v. United States, 379 U.S. 241, 262 (1964), and do not on their face appear to exceed the "limits upon the power of Congress to override State sovereignty" imposed by the Tenth Amendment. National League of Cities v. Usery, 426 U.S. 833, 842-44 (1976). In the National League of Cities case the Supreme Court struck down the application of the 1974 amendments to the Fair Labor Standards Act (FLSA) which extended that Act's coverage, including its minimum wage and maximum hour provisions, to State and local employees, insofar as those amendments operated to "directly displace the States' freedom to structure integral operations in areas of traditional governmental functions." Id. at 851. The Court said that the States' power to determine the wages and hours of those of its employees who carry out essential governmental functions is one of the "attributes of sovereignty attaching to every State government which may not be impaired by Congress" 426 U.S. at 845. The Court noted the substantial costs which coverage under the FLSA would impose on the States and the manner in which the Act would displace State policies regarding the delivery of "those governmental services which their citizens require." Id. at 847-50. Thus the imposition of FLSA wage and hour provisions on State and local governments, at least with respect to many employees, would impermissibly impair State sovereignty under the Tenth Amendment. Id. at 852.

The provisions of H.R. 4928 and H.R. 4929, which are directed to the integrity of public employee pension plans, and which contain reporting and oversight functions and establish limits on investments, may be intrusive or burdensome but do not, at least on their face, impose substantial new costs on the States. Nor do they necessarily affect the States' abilities to deliver traditional governmental services to its citizens. Federal legislation designed to ensure the integrity of public employee pension plans does not in and of itself interfere with integral parts of traditional state activities which are immune from federal regulation under the Tenth Amendment. The proposals do not manifestly intrude to an oppressive degree on the ability of the States to make policy decisions relative to the delivery of essential services. See also Federal Energy Regulatory Commission v. Mississippi, 50 U.S.L.W. 4566 (June 1, 1982); United Transportation Union v. Long Island R.R. Co., 50 U.S.L.W. 4315 (March 24, 1982); Hodel v. Virginia Surface Mining & Reclamation Association, 452 U.S. 264 (1981).

A full and complete analysis of these measures and their constitutionality under the Tenth Amendment would require a more comprehensive analysis of the provisions of the proposals and an examination of their actual effect on State and local programs.

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THE WHITE HOUSE

WASHINGTON

June 21, 1982

MEMORANDUM FOR THE CABINET COUNCIL ON ECONOMIC AFFAIRS

FROM: WILLIAM P. CLARK *WPC*

SUBJECT: Global Negotiations

At Cancun, the President stated that "we are prepared to carry out the commitment in the Ottawa Summit Declaration to conduct a more formal dialogue -- bilaterally, with regional groups, in the United Nations and in specialized international agencies." He further stated that "the United States would be willing to engage in a new preparatory process" for Global Negotiations (GNs) if there were acceptance of four essential understandings:

- talks should have a practical orientation;
- talks should respect the competence, functions and powers of the specialized international agencies;
- talks should be oriented toward mutually beneficial international growth and development taking into account domestic economic policies;
- talks should take place in an atmosphere of cooperative spirit.

On December 9, 1981, the United States submitted a draft resolution in New York which called for a preliminary conference (i.e. preparatory process) to decide upon agenda and procedures and required that the conference respect the jurisdiction, competence, functions and powers of the specialized fora (see Tab I).

On March 31, 1982, the developing countries (known as the G-77) submitted a draft resolution (Bedjaoui Text). It did not explicitly require the conference to respect the specialized fora, and it convened the conference directly without a preliminary conference to decide upon agenda and procedures. Already before the Summit, other OECD countries had accepted the G-77 text as a basis for discussion, and the Summit countries pressed the United States to take a similar position.

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Review 6/21/88

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In the Summit preparations, the United States decided to try and put its allies on the spot by securing their agreement at the Summit to changes in the G-77 text protecting the specialized agencies in return for our willingness to settle agenda and procedures in a preliminary phase of the Global Negotiations rather than in a preliminary conference.

The Summit produced communique language and a separate, confidential working document. The communique accepts the G-77 text as a basis for discussion and foresees a good prospect for launching GNs provided the independence of the specialized agencies is guaranteed. The working document sets out amendments to the G-77 text protecting the specialized agencies and commits the Summit leaders to have their delegations support this text in New York and not to depart from it except by unanimous agreement.

The amendments to the Bedjaoui text (see Tab II) explicitly protect the specialized agencies:

- by adding the words "by the Conference" at the end of paragraph 4;
- by adding "without duplication of existing appropriate fora" in paragraph 5;

COMMENT: This wording provides better protection than the December 9 US draft. The latter limited the creation of ad hoc groups by the Conference to subjects "where no fora existed." Under this formulation, the Conference could create ad hoc groups for specific subjects not within the formal mandate of existing fora. The new formulation allows us to argue that, even if the subject is not within the formal mandate of an existing forum, there is an "appropriate" existing forum to handle it.

- by rendering harmless other language in the G-77 text (e.g. "coherent and integrated approach" in paragraph 1, giving "due attention.....to the interrelationship between the central role of the conference and the specialized fora," and "relevant and appropriate objectives and guidance" in paragraph 5), because the conference, in whatever it does, must now respect the specialized fora, meaning it can do no more than make recommendations to the specialized fora.

The amendments further ensure that the substantive or negotiating phase of the conference cannot begin until a consensus has been reached in the preliminary phase on agenda and procedures.

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This provision protects the US position that we will not enter into negotiations until we know what it is that we are negotiating.

For the first time in 2 1/2 years, the United States has secured explicit protection of the specialized agencies in agreement with its six Summit country partners plus the European Community. We have not only avoided isolation in New York, but locked our Summit country partners into a consensus arrangement whereby no further changes in this text can be made except on a unanimous basis. Since this is a commitment among Summit leaders, our partners can isolate us in the future only if they bring the issue to the heads of government level and have their heads personally intervene with President Reagan (a very unlikely prospect). We will now see if the developing countries can accept these talks on our terms.

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The General Assembly,

Having considered the item entitled "Launching of the Global Negotiations on international economic co-operation for development,"

Noting resolution 34/138,

1. Decides to convene a preliminary United Nations Conference for Global Negotiations on international economic co-operation for development from 1982;
2. Decides that the preliminary Conference will establish the procedures, agenda and time-frame for the global negotiations;
3. Decides that the Conference will function throughout and reach agreement on the basis of consensus;
4. Decides that the Conference will exercise the central role in the global negotiations while respecting the jurisdiction, competence, functions and powers of the specialized fora within the United Nations system, and in that context will entrust to them specific agenda items or parts thereof together with appropriate guidance, or, where no such fora exist, to ad hoc groups it may create;
5. Decides to accord high priority to the Conference in relation to other United Nations activities except those of the principal organs established by the Charter of the United Nations in respect of facilities and services, and requests the Secretary-General to provide the necessary documentation to the Conference;
6. Decides that the Conference will report to the General Assembly at its thirty-seventh session.

The General Assembly

Having considered the item entitled "launching of the Global Negotiations on international economic cooperation for development",

In accordance with resolution 34/138,

1. Decides to convene a United Nations Conference for Global Negotiations on international economic cooperation for development from 3 May 1982. Such negotiations should be action-oriented and proceed in a simultaneous manner in order to ensure a coherent and integrated approach to the issues under negotiations;

2. Decides that the Conference will function throughout and reach agreement on the basis of consensus ;

3. Decides that the Conference will in a preliminary phase establish the procedures agenda and timeframe for the Global Negotiations ;

4. Decides that the Conference will exercise the central role in the Global Negotiations. The jurisdiction, competence, functions and powers of the specialized fora within the United Nations system will be respected ;

5. Decides that due attention shall be given in the preliminary phase to the inter-relationship between the central role of the Conference and the specialized fora which, together with the ad hoc groups it may create, will be entrusted with specific agenda items or parts thereof. Both the specialized fora and the ad hoc groups will proceed with their work on the basis of the relevant and appropriate objectives and guidance established by the Conference ;

6. Decides to accord high priority to the Conference in relation to other United Nations activities except those of the principal organs established by the Charter of the United Nations in respect of facilities and services and requests the Secretary-General to provide the necessary documentation to the Conference ;

7. Decides that the Conference will report to the General Assembly at its thirty-seventh session.

Recalling the resolution 34/138

As soon as a consensus reached, the Conference will enter the substantive phase.

...will be respected the Conference

...with the ad hoc groups it may create without duplication of existing appropriate fora, will be entrusted...